

Congress of the United States
U.S. House of Representatives
Committee on Small Business
2561 Rayburn House Office Building
Washington, DC 20515-6515

August 3, 2023

The Honorable Julie A. Su
Acting Secretary
U.S. Department of Labor
200 Constitution Ave. NW
Washington, D.C. 20210

The Honorable Douglas L. Parker
Assistant Secretary of Labor
Occupational Safety and Health Administration
201 12th St. S. Suite 401
Arlington, VA 22202

Dear Acting Secretary Su and Assistant Secretary Parker:

The House Committee on Small Business (the Committee) writes to inquire about the recent rule change to tracking workplace injuries and illnesses. The rule requires employers with more than 250 employees and employers with between 20 and 249 employees in certain industries to electronically report data on workplace injuries and illnesses.¹ The Occupational Safety and Health Administration's (OSHA) definition of "certain industries" broadly encompasses 66 industries.² It appears that OSHA may not have properly considered small entities during this rulemaking process.

OSHA estimates that the cost of the rule will be \$7.7 million annually: \$7.1 million cost to the private sector to "become familiar with the rule's requirements, update software, and submit forms electronically," and \$0.6 million cost to the government.³ Broken down by impacted business, OSHA estimates that each business will incur a cost of \$136 per year.⁴ While this may seem like a marginal cost at first glance it is unclear how OSHA determined this figure and some comments to the rule details why the impact may be greater than estimated.

Under the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), OSHA is required to conduct a SBREFA panel if a proposed rule would have a significant economic impact on a substantial number of small entities.⁵ Despite an objection from the small business community, OSHA did not host a panel because they certified it would not have a significant economic impact on a substantial number of small entities.⁶

¹ News Release, Dep't of Labor, Occupational Safety & Health Admin., Dep't Of Labor Announces Rule Expanding Submission Requirements For Injury, Illness Data Provided By Employers In High-Hazard Industries (Jul. 17, 2023).

² *Id.*

³ Improve Tracking of Workplace Injuries, 29 C.F.R. § 1904 (2023).

⁴ *Id.*

⁵ Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-12, § 244, 110 Stat. 867 (1996); *SBREFA Panels*, U.S. SMALL BUS. ADMIN., OFFICE OF ADVOCACY (last visited Jul. 25, 2023).

⁶ Improve Tracking of Workplace Injuries, 29 C.F.R. § 1904 (2023) (comment from Marc Freedman, U.S. Chamber of Commerce (Jun. 30, 2022)).

It is important for agencies to examine small businesses interests—which make up 99.9 percent of all businesses in the United States—when passing any new rule. America’s small businesses deserve to have their voices heard and considered. We therefore request the following information as soon as possible but no later than August 17, 2023:

1. How many small entities, employing between 20 and 249 people, will be impacted by this rule?
2. What are the exact calculations OSHA used to determine the cost would be \$136 per business?
3. Will regulatory compliance fall most heavily on the smallest entities which do not have the staff to comply with additional requirements?
4. Where can small businesses go to examine your analysis on the impacts this rule will have on their operations?
5. What alternatives have been considered to lessen the impacts on small businesses and why were the alternatives rejected?

To schedule the delivery of your response or ask any related follow-up questions, please contact Committee on Small Business Majority Staff at (202) 225-5821. The Committee on Small Business has broad authority to investigate “problems of all types of small business” under House Rule X. Thank you in advance for your cooperation with this inquiry.

In God We Trust,



Roger Williams
Chairman
Committee on Small Business



Jake Ellzey
Member of Congress
Committee on Small Business



Aaron Bean
Member of Congress
Committee on Small Business

The Honorable Julie A. Su
The Honorable Douglas L. Parker
August 3, 2023
Page 3 of 3

cc: The Honorable Nydia M. Velasquez, Ranking Member
Committee on Small Business